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BOARD MEETING
STATE OF CALIFORNIA
INTEGRATED WASTE MANAGEMENT BOARD

JOE SERNA, JR., CAL/EPA BUILDING
1001 I STREET
2ND FLOOR
BYRON SHER AUDITORIUM
SACRAMENTO, CALIFORNIA

TUESDAY, JULY 22, 2008
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CERTIFIED SHORTHAND REPORTER
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PETERS SHORTHAND REPORTING CORPORATION (916) 362-2345

APPEARANCES

BOARD MEMBERS

Ms. Margo Reid Brown, Chair

Mr. Wesley Chesbro

Ms. Rosalie Mul

Ms. Cheryl Peace

Mr. Gary Petersen

STAFF

Mr. Mark Leary, Executive Director

Ms. Julie Nauman, Chief Executive Director

Mr. Elliot Block, Chief Counsel

Ms. Kristen Garner, Executive Assistant

Mr. Albert Johnson, Staff

Mr. Howard Levenson, Deputy Director, Permitting and
Enforcement Division

Mr. Steven Levine, Staff Counsel

Mr. Ted Rauh, Program Director, Waste Compliance and
Mitigation Program

Ms. Victoria Rocha, Staff

Mr. Bernie Vlach, Branch Manager, Closure and Financial
Assurances Branch

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APPEARANCES CONTINUED

ALSO PRESENT

Mr. Glenn Acosta, LA County Sanitation District

Mr. Evan Edgar, California Refuse Removal Counsel

Mr. Steve Maffia, Maffia Ranch

Ms. Rachel Oster, Norcal Waste Systems

Mr. Joe Pozzi, Goldridge Resource Conservation District

Mr. Larry Sweetser, ESJPA

Mr. Kenneth Tipon

Mr. Chuck White, Waste Management

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1 PROCEEDINGS

2 CHAIRPERSON BROWN: Good morning, everybody.

3 Welcome to the July 22nd Board meeting of the California
4 Integrated Waste Management Board.

5 And, Kristen, can you call the roll?

6 EXECUTIVE ASSISTANT GARNER: Chesbro?

7 BOARD MEMBER CHESBRO: Here.

8 EXECUTIVE ASSISTANT GARNER: Mulé?

9 BOARD MEMBER MULÉ: Here.

10 EXECUTIVE ASSISTANT GARNER: Peace?

11 BOARD MEMBER PEACE: Here.

12 EXECUTIVE ASSISTANT GARNER: Petersen?

13 BOARD MEMBER PETERSEN: Here.

14 EXECUTIVE ASSISTANT GARNER: Brown?

15 CHAIRPERSON BROWN: Here.

16 Remind everybody to put your cell phones in the
17 vibrate mode.

18 And there are agendas in the back of the room.

19 If anybody would like to speak to any of the items on the
20 agenda, please fill out a speaker slip and bring it to
21 Kristen.

22 At the conclusion of the regular business, we
23 will be going into closed session.

24 Like to invite everybody to stand for the Pledge
25 of Allegiance.

1 (Thereupon the Pledge of Allegiance was recited
2 in unison.)

3 CHAIRPERSON BROWN: Anybody have any ex partes to
4 report?

5 We'll go first to Mark for --

6 EXECUTIVE DIRECTOR LEARY: Thank you, Madam
7 Chair. Good morning, Members.

8 I have some business to take care of and discuss
9 with you. But I think we'll wait on that, if you don't
10 mind, Madam Chair and Members.

11 I'd like to start off with a farewell to our
12 former Chief Deputy Director and now the Executive
13 Director of the Victim's Compensation Government Claims
14 Board, Ms. Julie Nauman.

15 And as I kick that off, I also want to say a
16 special hello and welcome to former Board Member Steve
17 Jones, who's in the audience. And I think he made a
18 special diversion of his work to get done today to come by
19 and say farewell to Julie also.

20 Typically, when you say farewell, you think of
21 all the accomplishments that someone brought to your
22 organization, and in this case, Julie. When I came to
23 start to develop that list of accomplishments and the ways
24 Julie's assisted us, I came to realize that there wasn't
25 much that we've done of any substance that Julie didn't

1 contribute to. And so the list became unmanageable. And
2 so I think maybe what I'd like to do, Madam Chair, is keep
3 it short and sweet.

4 There are many, many things I appreciated about
5 Julie. When Julie became the Chief Deputy in 2002, we
6 tried to create a partnership in the executive office.
7 And, Julie, you lived up to that expectation of
8 partnership I think as good and better than I ever could
9 have expected. The clarity of your thinking that you
10 brought to our organization, the maturity of your
11 thinking -- I could always rely on Julie to tell us what
12 would a mature good organization do with this issue. And
13 Julie always had some insight into that. And I really
14 appreciated that about it. She had a sense of what was
15 right and what was good for government and good for our
16 organization as we move forward. And I really appreciated
17 that.

18 But of course, above all, she was the warm friend
19 that we all grew to know and care for and love ultimately
20 as part of our professional lives here at the Integrated
21 Waste Management Board.

22 So I think I'll just say on behalf of myself and
23 Rubia and all of the Exec staff, when you say farewell,
24 farewell is a wish. Fare well. Fare excellently, Julie.
25 Do great out there. I know you will.

1 And there's a little token of our appreciation.
2 We have a little gift for you. And I'll give it to you,
3 and then you're off to Margo.

4 CHAIRPERSON BROWN: Come on up. And in our usual
5 form we have -- this one is so serious. I had expected to
6 break character at least for Julie. So I'm going to have
7 Rosalie hold the Resolution while I actually read it.

8 "Whereas, Julie Nauman has committed herself to
9 providing exemplary public service to the people of the
10 great state of California for a period spanning nearly 35
11 years.

12 "And Whereas, Ms. Nauman has begun her State
13 career in 1973 as a consultant to the California State
14 Assembly Committee on Local Government.

15 "And Whereas, Ms. Nauman continued her service as
16 the Chief Deputy Director of the Department of Housing and
17 Community Development.

18 "Whereas, Ms. Nauman, dedicated to the government
19 of good public policy and the implementation of sound and
20 effective programs, has been one of the foundations of the
21 Board's many accomplishments over her ten-year tenure with
22 the Board.

23 "And Whereas, Ms. Nauman has mentored and
24 befriended and provided enduring counsel for many over the
25 course of her time at the Waste Board. And all are better

1 for knowing her.

2 "And Whereas, Ms. Nauman has been known for being
3 responsive to stakeholders, ensuring quality treatment of
4 all stakeholders, and improving our processes to provide
5 better service to both internally and externally.

6 "And Whereas, Ms. Nauman has excelled with
7 deftness and dexterity in the care and feeding of five
8 Chairs, 17 Board members, and 21 advisors during her time
9 at the Board.

10 "Now, Therefore Be It Resolved, that the
11 California Integrated Waste Management Board, its entire
12 staff, and the citizens of California thank Ms. Nauman for
13 her many years of dedicated service and wish her good luck
14 and continuing success in her new appointment as the
15 Executive Director of the Victim's Compensation and
16 Government Claims Board.

17 "And Be It Further Resolved, the Board holds the
18 highest respect and admiration for Ms. Nauman and bestows
19 upon her best wishes and a fond farewell," and a cake
20 party.

21 Julie, thank you very much for everything. It's
22 been a pleasure to work with you and to have you part of
23 our team. And we will definitely feel your loss. Your
24 leaving is our loss. Thank you.

25 (Applause)

1 CHAIRPERSON BROWN: And as we all get to have our
2 last photo with Julie, please join us in the lobby for
3 cake.

4 MS. NAUMAN: This is the first time I've gotten
5 to do this.

6 Anyway, this is hard. Believe me, this is hard.

7 I've been through just a whirlwind of transition
8 over the last 20 days or so. And I've made speeches and
9 I've met stakeholders. And I've met 300 new staff people
10 and gotten to know a new Board.

11 But this has got to be the hardest moment of it
12 all. I'm filled with a lot of emotion right now, because
13 I see so many people here that mean so much to me.

14 I want to thank you so much for being here today,
15 for organizing this wonderful farewell, and for all that
16 you've meant to me over the last ten years.

17 I was thinking as I was walking down the hall to
18 my old office for one last time this morning, the first
19 Board meeting of this Board that I observed was ten years
20 ago this month, July 1998. I never thought I would stay
21 ten years.

22 But there's something about this place. And I
23 think you know what it is. It's that special quality of
24 this place that just captures you. And it becomes part of
25 your life. And this place has been -- and I'll tell you

1 will always be a part of my life. I'm so grateful to all
2 of you. I'm so proud to have been part of this
3 organization. This organization has accomplished so much,
4 so much before I got here, and so much since then.

5 And, Mark, thank you for the kind words and
6 attributions about my contributions. But I didn't do much
7 of it. It was all of us together that made the wonderful
8 things that have happened over the last several years
9 actually happen.

10 And so as they say, it's a farewell time. But I
11 want you to know that I have such a deep commitment for
12 the mission of this organization that as I take on my new
13 role as the Executive Director of the Victims'
14 Compensation and Government Claims Board, I bring that
15 mission with me.

16 And let me share just a little story with you.
17 Just last night as I was getting ready to leave and
18 thinking about today, one of my senior executives came in
19 and said, "You know, I just want to tell you something. I
20 haven't known you too long, but I used to think I was
21 pretty green. But just listening to you, the things that
22 you talk about, the things that you suggest we can do
23 around here -- I mean I know we have a recycling
24 coordinator and I know you plan to work with her. But I
25 tell you, just being around you for the last couple of

1 weeks, I'm walking around this place going, we can do this
2 and we have to take care of that. And I know there's all
3 this other stuff that we can do."

4 So I mean it when I say I take the mission of
5 this organization with me and wherever else I may go,
6 because you really have been such a tremendous part of my
7 life.

8 I've learned so much. The values that we hold
9 near and dear here are those that I bring to the Board.
10 Things like transparency, open communication,
11 inconclusiveness, and collaboration. Those are all things
12 that we all worked on together. And those are the things
13 I'm hoping to bring to the Board and to bring that
14 organization to a whole other level. And I wouldn't be
15 able to do that but for the experience that I've had
16 working here.

17 So I may not see you on a day to day basis
18 anymore, but please know that you have a very special
19 place in my heart. And your mission will always be my
20 mission. Thank you so much.

21 (Applause)

22 (Thereupon a recess was taken.)

23 CHAIRPERSON BROWN: I think we will reconvene.

24 Kristen, can you call the roll?

25 EXECUTIVE ASSISTANT GARNER: Chesbro?

1 BOARD MEMBER CHESBRO: Here.

2 EXECUTIVE ASSISTANT GARNER: Mulé?

3 BOARD MEMBER MULÉ: Here.

4 EXECUTIVE ASSISTANT GARNER: Peace?

5 BOARD MEMBER PEACE: Here.

6 EXECUTIVE ASSISTANT GARNER: Petersen?

7 BOARD MEMBER PETERSEN: Here.

8 EXECUTIVE ASSISTANT GARNER: Brown?

9 CHAIRPERSON BROWN: Here.

10 Do we have any ex partes to report?

11 BOARD MEMBER MULÉ: Madam Chair, I spoke to Mark
12 Aprea regarding Item 14.

13 CHAIRPERSON BROWN: Okay. Thank you.

14 BOARD MEMBER CHESBRO: I don't think there was
15 anything specific to the agenda, but I did have a
16 conversation with Steve Jones about some solid waste
17 activities going on around the state.

18 CHAIRPERSON BROWN: Better safe than sorry.

19 Okay. Mark, I think --

20 BOARD MEMBER PETERSEN: Madam Chair, I didn't say
21 anything out there. I was very quiet.

22 CHAIRPERSON BROWN: Right.

23 BOARD MEMBER PETERSEN: But I did talk to Kent
24 Stoddard.

25 CHAIRPERSON BROWN: Okay. I talked to a bunch of

1 people out there. I said hi to Chuck. I said hi to Kent,
2 to Glenn Acosta. Talked to John Cupps about Katie's arm.

3 BOARD MEMBER PETERSEN: Okay.

4 CHAIRPERSON BROWN: I'm kidding. I never know.
5 Okay. Just to be on the safe side though.

6 We have the executive director's report. Let's
7 go to Mark first.

8 EXECUTIVE DIRECTOR LEARY: Thank you, Madam
9 Chair. Good morning, again. Couple of business items.
10 If I read them really fast, it's all that cake I ate.

11 First of all, congratulations to Tom Estes and
12 the crew. We once again received the award for Achieving
13 Excellence in Financial Reporting from the State
14 Controller's Office.

15 (Applause)

16 EXECUTIVE DIRECTOR LEARY: They send us a little
17 plaque every year, and we always do well in that
18 department. So congrats to Tom and our great accounting
19 shop.

20 It's a shame Julie left. I know how she loves
21 the emergency waivers when it involves dead livestock.
22 But I have one to report.

23 Excessive heat through the California central
24 valley in July of 2008 caused a huge number of -- high
25 number of livestock and poultry deaths. Kings County

1 officials issued a proclamation 08-03 due to the
2 unavailability of disposal facilities which resulted in
3 the large accumulation of poultry carcasses.

4 The Waste Management Kettleman Hills facility
5 submitted a requested for emergency waiver from the LEA.
6 It was granted. And as is my obligation, I'm reporting it
7 to you. And I do not contemplate modifying that emergency
8 waiver in any way. It's appropriate for the situation.

9 And then again I think a part of my
10 responsibility to report to you about permitting
11 activities, but you've also I think seen some internal
12 e-mails where we've concluded the efforts to provide
13 temporary permits to facilities in the state pursuant to
14 the passage of AB 1473 last year. There are 15
15 facilities, the vast majority of which in L.A. County that
16 have been granted temporary solid waste facility permits
17 issued by Ted and Mark de Bie and our permitting program.
18 I think you've already seen the list. I won't read it
19 into the record. But I'm happy to entertain any questions
20 you have on either of those items.

21 BOARD MEMBER PETERSEN: Mark, thank you.

22 Now that we've got those -- the emergencies have
23 been out there and they've responded, what's the next step
24 with the ones that we know are single stream and where are
25 we going from here?

1 EXECUTIVE DIRECTOR LEARY: I'll throw in my two
2 cents. And maybe Ted or Mark de Bie can help.

3 I know by June 30th of 2010 those facilities have
4 to have achieved final and full compliance with our
5 permitting requirements. These temporaries are met as
6 1473 intended to be a hold-over to complete the process
7 and stay in compliance with solid waste laws in the state.
8 But if they don't complete the permitting process by 2010,
9 they are then operating without a permit.

10 PROGRAM DIRECTOR RAUH: So we'll be working with
11 the LEAs to make sure we track these facilities that
12 progress is being made. At this point, they'll be going
13 through the normal land use CEQA, if required, process to
14 gain local approvals for their operating activities and
15 then come back through the permitting process to the Board
16 for a full permit as warranted.

17 BOARD MEMBER PETERSEN: Ted, is the LEAs going to
18 work with the local jurisdictions to survey who's doing
19 single stream? Because that's where this is all coming
20 from. Is that how we're going to approach it or what?

21 PROGRAM DIRECTOR RAUH: That should have already
22 been done. In other words, when a bill was passed, it was
23 incumbent on the LEAs to reach out to all of those
24 entities in their jurisdictions who are performing these
25 types of services and work with them to identify the

1 potential need for them to get an emergency permit or a
2 temporary permit. And then become a fully regulated --
3 part of the fully regulated community. So that work
4 should already have been done.

5 BOARD MEMBER PETERSEN: Okay. Great. Thank you.

6 EXECUTIVE DIRECTOR LEARY: Madam Chair, that
7 concludes my report.

8 CHAIRPERSON BROWN: Thank you. Any other
9 questions for Mark? We have two speakers to speak during
10 our public comment. First one is Evan Edgar.

11 MR. EDGAR: Board members, my name is Evan Edgar.
12 I'm engineer for the California Refuse Removal Counsel.

13 I'm here today to talk about AB 32 and the
14 Scoping Plan that was on today's agenda. And since we
15 don't have any appendices, we can stick to the big
16 picture. And I have some big comments. But we're looking
17 forward for the appendices to come out so we get the
18 details of what CARB is all about.

19 But we have to commend CARB and the leadership of
20 AB 32 and what's in there on the big picture from the low
21 carbon fuels, to RPS at 33 percent, to the energy
22 efficiency, to the million solar roofs, there's a lot of
23 great opportunities there. And for the state of
24 California for opportunities, for our industry. There's a
25 lot there, and we look forward to implementing AB 32.

1 But one thing that's not there is that recycling
2 was left at the curb. And maybe in the appendices they
3 talk about recycling and a little bit more about it. But
4 it's not a big picture. Because recycling as a number for
5 direct emissions reduction and for avoided indirect,
6 recycling is ubiquitous with everything else from energy
7 sector to the transportation sector. So recycling is
8 everywhere within the direct emission and indirect
9 emission world.

10 Where opportunities are at is recycling benefits
11 from avoided indirect emissions from using less energy.
12 And there's a huge opportunity there and. How do we
13 understand that. And I've been working with CARB staff
14 and the Climate Action Team and with the California Action
15 Registry, trying to get ad hoc committees together looking
16 at all angles on how to assess the greenhouse gas benefits
17 of recycling. And there's many ways to go about it with
18 the federal EPA to modify for California. There's a lot
19 of different assessment tools today, and everybody is
20 using assessment tools in a different manner and different
21 applications. And the federal EPA model was never
22 designed to recycling protocol for carbon credits. It was
23 designed just to have some tools for assessment of
24 greenhouse gas benefits that are communal.

25 So I guess my comment today is we have comments

1 in the Early Action Plan to have some type of recycling
2 protocols in the Early Action Plan. As part of the ETAAC
3 report, there is a listing of having recycling protocols
4 for local governments and businesses. As part of your
5 commercial waste characterization study this year, the
6 Scope of Work was modified to address the commercial waste
7 recycling aspects in the greenhouse gas benefits. I thank
8 staff for re-scoping that and looking at the benefits
9 there.

10 But working with the California Action Registry,
11 and working with stakeholders, everybody has the eye on
12 carbon credits. A lot of people have an eye on developing
13 recycling protocols for carbon credits. And that
14 benchmark, that type of standard is high to reach. It
15 will take years to do. The forest sector protocol took
16 four or five years. The manure took a lot of years. So
17 by waiting for a recycling protocol from CCAR, the Action
18 Registry, and other stakeholders with an eye on carbon
19 credits will not happen in a long time. But it's a missed
20 opportunity.

21 So my comments to the CARB as part of the Scoping
22 Plan process is that and working with the Waste Board we
23 need assessment tools today, factoids for program design,
24 for CEQA assessment. Starting July 1, '09, all projects
25 will have some type of CEQA assessment where we need some

1 type of assessment tools there for the benefits of
2 recycling.

3 So we have some opportunities here to take the
4 federal EPA WARM model, modify for California, and
5 standardized it, because everybody is using it how they
6 want to use it. I'm using it for optional reporting at
7 CCAR. I had Marin Sanitation Service and other CRRC
8 members sign up for CCAR. And right now what we're
9 showing on a typical garbage company and recycling that
10 has a MRF, we're about 15 to 20 times carbon negative.
11 And some other modeling out there by ICLEI and the other
12 people have carbon neutral.

13 So the few opportunities to take assessment tools
14 today to demonstrate the benefits of recycling in that
15 manner. But the danger is that recycling has such huge
16 opportunities that people have it pretty low on their
17 priority list because it's avoided indirect emissions. So
18 CARB is looking at direct emission reductions with
19 transportation and indirect emissions. But avoided
20 indirect is on everybody's low priority list.

21 So what I'm going to have for August 1st as part
22 of our Scoping Plan comments is I'd like to work with the
23 Waste Board on somewhat develop the assessment tools today
24 for program design and CEQA assessment so we can move
25 forward with getting our arms around the communal benefits

1 of recycling.

2 BOARD MEMBER CHESBRO: You're suggesting we
3 should take the WARM model and heat it up?

4 MR. EDGAR: It's pretty good on single stream
5 stuff. I've done some factoids on cans, bottles, and
6 newspapers. And DOC used the WARM model on the benefits
7 of beverage container program for the first six months and
8 they're using it right now. It's not as good on
9 composting organics. And Brenda Smyth on your staff is
10 working on that with a life cycle assessment study. We're
11 not there yet. But there are some tools today that we can
12 modify to roll out programs that local governments can use
13 as part of the Institute of Local Government and other
14 stakeholders can use for program design and CEQA
15 assessment.

16 BOARD MEMBER CHESBRO: Can I ask the Chair or
17 Mark or both of you to sort of update us about what you
18 know about CARB's efforts and our efforts to get recycling
19 up the list there.

20 CHAIRPERSON BROWN: Mark, or do we want to call
21 Brenda Smyth, come on down, or Howard.

22 EXECUTIVE DIRECTOR LEARY: Between Howard and I,
23 I think we can probably respond.

24 We've had a lot of interaction. And we've tried
25 via memos and verbal updates to keep you posted. We've

1 submitted an awful lot of thoughts, suggestions, ideas to
2 CARB for consideration as they go forward in developing
3 the Scoping Plan and the subsequent appendices and
4 modifications to the Scoping Plan as it occurs into the
5 future.

6 So although the current Scoping Plan does not
7 reflect the robust interaction we've had with their
8 organization, I think as time plays out and we continue to
9 work with them and continue to quantify, I think it will
10 reflect the roll recycling plays more fully, the very
11 first draft made.

12 Howard, do you have anything to add?

13 PROGRAM DIRECTOR LEVENSON: I agree with Mark.
14 And just add we are anticipating that a lengthy set of
15 appendices, probably several inches thick, will be
16 released shortly by the ARB appendices to the Scoping
17 Plan. And I think once that's released, we would plan to
18 have an update to you next month a very full discussion of
19 all the kinds of measures that we've been working on, the
20 status, the various related activities that we have such
21 as what Evan mentioned, the life cycle analysis, the work
22 with the Institute for Local Government and so on.

23 BOARD MEMBER CHESBRO: Madam Chair, I absolutely
24 agree with the concern that Evan has raised. And I think
25 every Board member agrees that key to our strategy of

1 moving up from our current diversion percentages is
2 hitching our issue successfully to the global warming
3 strategies. And we certainly don't want the train to
4 start moving without being on it. So thank you for
5 bringing that to us.

6 CHAIRPERSON BROWN: Thank you, Evan.

7 We have one other speaker. And this relates to
8 Item 9 that was pulled from our agenda today for future
9 consideration. We pulled it so that we could continue to
10 work on this item a little bit with stakeholders and
11 community members before we move on Item 9. But we'd
12 welcome you to speak to the item or to the issue, and that
13 is Kenneth Tipon.

14 MR. TIPON: Thank you. Kenneth Tipon. Opentoush
15 (phonetic) Miwak for welcome. Nice to be here, Board
16 members.

17 Again, my name is Ken Tipon with the federated
18 Indians of Graton Rancheria. And I'm here today to
19 provide some comments on both Item 8 and 9, but Item 9
20 will give a good indication of what the issues were with
21 Item 8.

22 Just for your information, the federated Indians
23 of Graton Rancheria is a sovereign government recognized
24 federally in the year 2000 by Congressional act.

25 The tribal council has basically authorized the

1 Sacred Sites Protection Committee to act on behalf of the
2 tribe on issues of preservation and protection of cultural
3 resources. So I'm here today in that capacity. I'm vice
4 chair on Sacred Sites Protection Committee.

5 And for your information also, our territory
6 encompasses all of Marin County, including Angel Island,
7 and southern Sonoma County which is basically generally
8 from the Russian River south.

9 In regards to Item 9, the Infineon Raceway tire
10 removal project, I'm very happy that the Board pulled that
11 particular item. The issues involved with that one are
12 basically involving government to government relations.
13 And the issue of obtaining information from the tribal
14 government in terms of specific cultural resources and
15 sacred sites that we know about and have knowledge of and
16 are absolutely necessary to be included in the
17 environmental document. In this case, it was a mitigated
18 negative declaration that was prepared by the Board.

19 The specific issue is with the cultural resources
20 section in which there was no information provided in that
21 particular section in the document that even mentions the
22 tribe as being consulted. So in that regard, the adequacy
23 of that document would have been would basically have been
24 inadequate to approve.

25 As I said, the main issue is with the government

1 to government relationship. At this time, I'd like to ask
2 the Board if it would be possible to obtain a copy of the
3 Board's tribal consultation policy that would outline how
4 we as two governments, entities, are able to sit down and
5 talk with regard to preservation and protection of
6 cultural resources.

7 I have had conversations with Wes Mindermann who
8 is the project head on these two particular projects. And
9 he was very helpful. And I appreciate all his information
10 he provided to me. And we're both in agreement and with
11 regards to Item 9. And he's very willing to sit down and
12 talk with the tribe with all the issues that we have on
13 this particular project.

14 I don't foresee any problems, but just to let the
15 Board know that the area in which this particular project
16 is located is located close to a very highly sensitive
17 religious area within the Tolay Creek and Tolay Lake area,
18 which is not too far from this project site. So with
19 regard to the impacts that potentially could happen with
20 initiation of this project, implementation of the project,
21 the tribe is very concerned with being able to monitor the
22 project and understand what the project exactly is.

23 So thank you for pulling that at this time. And
24 I look forward to meeting with Board staff and discussing
25 the particulars on the project.

1 If it's okay, I'd like to address Item 8.

2 BOARD MEMBER CHESBRO: Madam Chair.

3 MR. TIPON: It's real quick.

4 CHAIRPERSON BROWN: We'd like to take your
5 comment while we have Item 8.

6 Senator Chesbro.

7 BOARD MEMBER CHESBRO: While you're determining
8 that, let me just ask you a question, if I may. So is
9 your concern with the negative dec that it lacks
10 consultation or that there's information missing relative
11 to the potential impact on sacred sites or Native American
12 sites?

13 MR. TIPON: Both issues.

14 BOARD MEMBER CHESBRO: The reason I ask is
15 because in some cases I'm aware of -- and there's
16 different responses to this question. There is no one
17 answer.

18 But sometimes the concern with identifying in a
19 public document can also put a site at risk, you know.
20 And so certainly at minimum I think the consultation is
21 important and I appreciate you bringing it to our
22 attention. But I also wanted to raise the issue. And you
23 don't need to answer it here. But I think it's one that
24 our staff will want to know the response to the tribe on
25 is whether or not there's also risk created by a public

1 discussion or public identification of a site, because
2 there's other threats to sites besides development.
3 There's people who will -- and I actually sponsored
4 legislation regarding the protection of sacred sites and
5 upping the penalties for disturbing them. But part of the
6 process of protecting them is also the determination of
7 whether it makes sense to publicly identify the site in a
8 way that might attract people who would be disrespectful
9 and disruptive of the site.

10 MR. TIPON: I appreciate that, Mr. Chesbro. And
11 in fact, there are laws that are applied to the
12 confidentiality of specific locations of specific sites.
13 So, yeah, we would make that -- talk to Wes about that to
14 make sure that the environmental document doesn't
15 specifically have information on specific site locations.

16 CHAIRPERSON BROWN: The purpose for pulling the
17 item was to give the staff the opportunity, Ted and his
18 shop and Wes, to pursue consultation with the tribal
19 community government and to understand the scope of what
20 the project is. So we will direct staff to meet
21 government to government with your community and make sure
22 that they have all the information and consultation
23 necessary.

24 I will ask you to hold your comment on Item 8
25 until that is under consideration. We haven't had a staff

1 presentation on it yet, and that is on the agenda. So we
2 will welcome you back when we get to Item 8.

3 MR. TIPON: Thank you.

4 CHAIRPERSON BROWN: Now we'll move to the full
5 agenda.

6 Items 2, 3, and 6 are on consent.

7 We will take Item 7 on fiscal consent.

8 Items 5, 13, and 15 were heard in Committee only.

9 Items 4, 10, 9, 11, and 12 were all pulled from
10 the agenda for this month.

11 And Items 8, 14, and 16 will be heard by the full
12 Board with Item 16 being heard first. Since that was an
13 item that was not previously heard, we'll do that one
14 first.

15 So we'll move first to the consent agenda.

16 BOARD MEMBER CHESBRO: So moved.

17 CHAIRPERSON BROWN: It's been moved.

18 BOARD MEMBER MULÉ: Second.

19 CHAIRPERSON BROWN: And seconded.

20 Tracey, can you call the roll?

21 ADMINISTRATIVE ASSISTANT COTTINGIM: Chesbro?

22 BOARD MEMBER CHESBRO: Aye.

23 ADMINISTRATIVE ASSISTANT COTTINGIM: Mulé?

24 BOARD MEMBER MULÉ: Aye.

25 ADMINISTRATIVE ASSISTANT COTTINGIM: Peace?

1 BOARD MEMBER PEACE: Aye.

2 ADMINISTRATIVE ASSISTANT COTTINGIM: Petersen?

3 BOARD MEMBER PETERSEN: Aye.

4 ADMINISTRATIVE ASSISTANT COTTINGIM: Chair Brown?

5 CHAIRPERSON BROWN: Aye.

6 The consent agenda is passed.

7 And we will move first to the only fiscal consent
8 item this month, Item 7. Ted.

9 PROGRAM DIRECTOR RAUH: Yes. Thank you, Chair
10 Brown. I'm Ted Rauh, Chief of the Waste Compliance and
11 Mitigation Program.

12 Item 7 requests the Board to consider and approve
13 a Scope of Work and to approve the execution of an
14 interagency agreement with the Department of Fish and
15 Game. The agreement would develop a pilot program to work
16 with outside law enforcement agencies to conduct
17 environmental remediation at former large scale marijuana
18 crop sites throughout California.

19 The proposed agreement would expire on May 2010
20 unless extended and would be for a not-to-exceed amount of
21 \$250,000.

22 And as you may have noted in the Bee today an
23 article about this very kind of activity, this is an
24 agreement that would help remediate those kinds of
25 unfortunate environmental damage.

1 And that concludes our presentation.

2 CHAIRPERSON BROWN: Thank you, Ted.

3 Do we have any questions? Can I have a motion?

4 BOARD MEMBER MULÉ: Madam Chair, I'd like to move
5 Resolution 2008-121.

6 BOARD MEMBER PEACE: Second.

7 CHAIRPERSON BROWN: It's been moved by Member
8 Mulé, seconded by Member Peace.

9 Tracey, can you call the roll?

10 ADMINISTRATIVE ASSISTANT COTTINGIM: Chesbro?

11 BOARD MEMBER CHESBRO: Aye.

12 ADMINISTRATIVE ASSISTANT COTTINGIM: Mulé?

13 BOARD MEMBER MULÉ: Aye.

14 ADMINISTRATIVE ASSISTANT COTTINGIM: Peace?

15 BOARD MEMBER PEACE: Aye.

16 ADMINISTRATIVE ASSISTANT COTTINGIM: Petersen?

17 BOARD MEMBER PETERSEN: Aye.

18 ADMINISTRATIVE ASSISTANT COTTINGIM: Chair Brown?

19 CHAIRPERSON BROWN: Aye.

20 The Resolution passes. Thank you, Tracey.

21 And we will move next to Item 16. Howard.

22 PROGRAM DIRECTOR LEVENSON: Thank you, Madam
23 Chair. Howard Levenson with the Sustainability Program.

24 And this item is Consideration of the Grant
25 Awards for the Targeted Rubberized Asphalt Concrete

1 Incentive Grant Program.

2 As you know, we did not have a Committee meeting,
3 so typically this would have been heard in Committee and
4 be on fiscal consent. We'll make a very short
5 presentation by staff. And I'll turn it over to Victor
6 Rocha to make that quick presentation for you.

7 MS. ROCHA: Good morning, Madam Chair and Board
8 members. My name is Victoria Rocha with the Financial
9 Assistance Division.

10 Staff received two eligible applications: The
11 City of El Cerrito, funding recommendation, 175,000; and
12 the City of Baldwin Park, funding recommendation for
13 150,000; totaling 325,000.

14 Staff recommends the Board approve Option 1 and
15 adopt Resolution 2008-129 revised. Thank you. And that
16 concludes my presentation.

17 CHAIRPERSON BROWN: That was good. Nice.
18 Concise. To the point. Brief.

19 BOARD MEMBER PETERSEN: Madam Chair, I'd like
20 to -- no questions.

21 CHAIRPERSON BROWN: Okay.

22 BOARD MEMBER PETERSEN: I'm done.

23 CHAIRPERSON BROWN: Would you like to move the
24 Resolution, Member Petersen?

25 BOARD MEMBER PETERSEN: Can I do that? Item

1 2008-129 Revised.

2 BOARD MEMBER MULÉ: Second.

3 CHAIRPERSON BROWN: It's been moved by Member
4 Petersen and seconded by Member Mulé.

5 Tracey, can you call the roll?

6 ADMINISTRATIVE ASSISTANT COTTINGIM: Chesbro?

7 BOARD MEMBER CHESBRO: Aye.

8 ADMINISTRATIVE ASSISTANT COTTINGIM: Mulé?

9 BOARD MEMBER MULÉ: Aye.

10 ADMINISTRATIVE ASSISTANT COTTINGIM: Peace?

11 BOARD MEMBER PEACE: Aye.

12 ADMINISTRATIVE ASSISTANT COTTINGIM: Petersen?

13 BOARD MEMBER PETERSEN: Aye.

14 ADMINISTRATIVE ASSISTANT COTTINGIM: Chair Brown?

15 CHAIRPERSON BROWN: Aye.

16 The resolution passes. Thank you, Victoria and
17 Tracey.

18 And we will move next to Item 8.

19 PROGRAM DIRECTOR RAUH: Thank you, Madam Chair.

20 Item 8 is a report on the status of the
21 remediation of the Sonoma County waste tire sites and also
22 consideration of whether the Maffia Trust waste tire site
23 meets the criteria for negotiated remediation. Here to
24 give you an overview of the status of cleanup is Albert
25 Johnson and also joining me is Steven Levine.

1 MR. JOHNSON: Good morning, Madam Chair and
2 members of the Board. My name is Albert Johnson. I'm
3 presenting this item for Wes Mindermann who is not
4 available today.

5 And first item has two parts. First, we'll talk
6 about the Maffia and getting it placed into Group 1. And
7 then we'll discuss the other two sites that have been in
8 Group 1 for quite a while that we're going to clean up.

9 A little history. Originally, there were eight
10 Sonoma waste tire sites. Eventually seven were placed
11 into the Group 1 status. And five of those have been
12 cleaned up to date.

13 The Maffia site came to the attention of the
14 Board in 2006. And in the last two years with the help of
15 the Goldridge RCD here today, we have the site ready for
16 remediation.

17 What we're seeking today is the Board to approve
18 Resolution 2008-122, which will allow this site to be
19 placed in the Group 1 status consistent with the way in
20 which we've treated the other waste tire sites in the past
21 in Sonoma County. And that will afford them the
22 Board-managed remediation limited to tire removal and cost
23 recovery.

24 Board staff recommends approval of Resolution
25 2008-122.

1 The other two Group 1 sites that we have,
2 Infineon Raceway and Flocchini -- Infineon has applied for
3 all of their permits in late 2007, early 2008. They have
4 all the applications in. And the Fish and Wildlife
5 Service is short staffed and they're processing the
6 permit. And it looks like we're not going to be able to
7 clean up Infineon this year, but we should have all the
8 permits by the end of 2008. And next summer we can get
9 that one cleaned up. That will give us plenty of time to
10 work on the CEQA issue so there's no big rush there.

11 Secondly, we have the Flocchini site. That site
12 is fairly close to being remediated. However, the RCD who
13 is the lead for the CEQA has -- they continuously seem to
14 have questions about the work plans we develop. We
15 addressed their comments and then we think we're moving
16 forward and then they come up with more comments.

17 We also are working on the restoration plan which
18 was promised to us by the end of June, and we haven't seen
19 it yet. Wes has brought his new contractor Guinn
20 Construction out there. I went with them to help them
21 out. And our contractors has looked at the site and is
22 pretty much ready to go. We're just waiting for this
23 additional information. And perhaps we can come back in
24 August and the Board can do a negotiated cost recovery.
25 We'll have time to clean that site up this year if that

1 occurs.

2 That pretty much ends my presentation. Steve
3 Levine may want to add something to it.

4 STAFF COUNSEL LEVINE: I'm Steven Levine, Staff
5 Counsel for the Board. I have an institutional memory of
6 a lot of the issues here. So if there are any questions
7 about the background, it's pretty fully addressed in the
8 item. But I'm here to answer any questions.

9 CHAIRPERSON BROWN: Thank you, Steven. That's a
10 good way of to characterize it. I think Steven has been
11 involved in this since the beginning. Institutional
12 knowledge.

13 Do we have any questions? Thank you very much.

14 Oh, we do have two speakers on this item. First
15 I'll welcome back Kenneth Tipon. And I know I
16 mispronounced it. My apologies.

17 MR. TIPON: Don't worry about it. You're not the
18 first.

19 With regard to the Maffia ranch project, again,
20 in talking to Wes and ultimately talking to Lisa Hewlett
21 with Gold Ridge and then just real briefly with Joe Pozzi
22 and Mr. Maffia, they understand what our issues are. And
23 at this point, we don't want to delay the project. It's
24 too close to being implemented. So we've asked for
25 consultation with the individuals involved and they've

1 agreed.

2 And so we're going to be meeting prior to the
3 implementation and iron out some of the last minute items,
4 including a tribal treatment plan we developed to just
5 make sure that everybody is in agreement with potential
6 inadvertent discoveries. That's not to say there will be,
7 but there's also a potential in those types of sensitive
8 areas. And in this case that there are discoveries that
9 everybody knows who's responsible for what and it also
10 details existing laws that are out there on the books. So
11 it's just a matter of the tribe meeting with those
12 individuals and taking care of business.

13 Because there was mention of the Flocchini
14 project also, that pretty much -- I have the same comments
15 on that particular project in terms of the CEQA process.
16 And so hopefully Board staff will be in touch with us on
17 that particular project also. And that's --

18 CHAIRPERSON BROWN: I think on Flocchini we're
19 not lead agency on CEQA; is that correct?

20 MR. JOHNSON: That's correct.

21 CHAIRPERSON BROWN: So we don't have the same
22 position or roll relative to CEQA. I'll have Steven
23 explain that exactly. On Infineon, we're acting as the
24 lead agency for CEQA on that one. So we will meet with
25 you in consultation on that particular mitigated neg dec.

1 On the others, Steven.

2 STAFF COUNSEL LEVINE: Thank you. Steven Levine,
3 staff counsel. The Flocchini site, the lead agency is the
4 Southern Sonoma Resource Conservation District. So I
5 would encourage you to contact them directly with your
6 concerns. In addition to the notifications that went out
7 on lead agency designations we've had on CEQA to the
8 tribes and everything as mentioned, we would be happy to
9 do further work with the tribes going forward.

10 CHAIRPERSON BROWN: And I think if you are in
11 consultation with Albert and Wes, they can hook you up
12 with the appropriate people as well to ensure that you do
13 make that communication in consultation as quickly as
14 possible so these can move forward.

15 MR. TIPON: One last question for clarification.
16 Is the Board a responsible agency in this particular case?

17 STAFF COUNSEL LEVINE: They are an agency
18 involved with remediation, but not the lead agency.

19 MR. TIPON: Are they responsible agency?

20 CHIEF COUNSEL BLOCK: Yes.

21 STAFF COUNSEL LEVINE: Yes. They would be one of
22 the responsible agencies.

23 CHAIRPERSON BROWN: Thank you for being here. I
24 appreciate it.

25 Our next speaker is Joe Pozzi with the Goldridge

1 Resource Conservation District joined by Steve Maffia.

2 MR. POZZI: Good morning, Board members. Again
3 my name is Joe Pozzi. I'm a district manager for the
4 Goldridge Resource Conservation District. And this is
5 Steve Maffia, the landowner where we are working on those
6 tires over there.

7 Just wanted to thank you for this consideration
8 and hopefully getting this moved into the category one
9 status. It's a situation once again with one of these
10 legacy tire sites where in the 60s and 70s these tires
11 were placed there under the recommendation of other
12 governmental agencies for erosion control. They have done
13 a good job with that, but obviously they're tires and they
14 need to be removed.

15 We have completed at the Gold Ridge RCD all the
16 of permits and studies. And we've talked to Ken to take
17 care of the last minute issues with their tribe to deal
18 with that. We're going to meet with them here very
19 shortly prior to any kind of movement of any of the tires
20 or restoration.

21 But we do have things all lined out with Steve
22 and Wes on the tire removal part and the restoration
23 design has been completed. The contractor has been
24 secured to do the restoration. And we would plan to start
25 that after the migratory bird allowance starts, which

1 would be August 15th. And we plan to have that completed
2 by October 1st. We have a leeway until the 15th with the
3 Department of Fish and Game. But our goal is to have that
4 done by the 15th and be prepared and ready to go.

5 So we're anxious to get this done. I think it's
6 been efficient on our permitting and studies and we moved
7 it right along with the help of your agency. And we look
8 forward to getting it completed this year. And I didn't
9 know if you had any questions for myself or for Steve, but
10 I'd just like to be here to help and assist in that if we
11 can.

12 CHAIRPERSON BROWN: Great. Thank you very much,
13 Mr. Pozzi. Any questions?

14 Appreciate your diligently working through this
15 process. And Mr. Maffia, very much appreciate your
16 cooperation in working through this process. I know it's
17 a difficult one, but your cooperation as well as meeting
18 with the tribal government is important. Appreciate you
19 doing that as well. Thank you.

20 I don't think we have any questions from any
21 Board members.

22 Thank you very much. Thank you for being here.

23 BOARD MEMBER CHESBRO: Madam Chair, I'm very
24 supportive of the staff's recommendation to negotiate with
25 the landowner regarding Board-managed remediation limited

1 to tire removal and cost recovery and equivalent to the
2 previously approved efforts for the seven sites that had
3 been handled that way previously. So I'll so move.

4 CHAIRPERSON BROWN: Do I have a second?

5 BOARD MEMBER MULÉ: Second.

6 CHAIRPERSON BROWN: It's been moved by member
7 Chesbro and seconded by Member Mulé.

8 Kristen, can you call the roll?

9 EXECUTIVE ASSISTANT GARNER: Chesbro?

10 BOARD MEMBER CHESBRO: Aye.

11 EXECUTIVE ASSISTANT GARNER: Mulé?

12 BOARD MEMBER MULÉ: Aye.

13 EXECUTIVE ASSISTANT GARNER: Peace?

14 BOARD MEMBER PEACE: Aye.

15 EXECUTIVE ASSISTANT GARNER: Petersen?

16 BOARD MEMBER PETERSEN? Aye.

17 EXECUTIVE ASSISTANT GARNER: Brown?

18 CHAIRPERSON BROWN: Aye.

19 The resolution passes. Thank you, all.

20 STAFF COUNSEL LEVINE: Madam Chair, Steven
21 Levine, Staff Counsel.

22 If I may, now that the Board has moved the site
23 into Group 1 status, Mr. Maffia may just have a couple of
24 words on the negotiated cost recovery that you'll be
25 deliberating on in closed session. Didn't want to do that

1 earlier, because you had not voted yet. That would be his
2 opportunity.

3 MR. MAFFIA: Good morning, ladies and gentlemen.
4 Steve Maffia, land owner, the Maffia land tire site. I
5 appreciate any help that can be given to us land owners
6 with these tire projects. They can become quite costly.
7 And a lifetime of ranching doesn't really pay for all the
8 removal. So your consideration would be deeply
9 appreciated. Thank you.

10 CHAIRPERSON BROWN: Thank you very much, Mr.
11 Maffia. Steven, thank you.

12 Okay. We'll move next to Item 14. Ted.

13 PROGRAM DIRECTOR RAUH: Yes, thank you, Madam
14 Chair. Staff is before you today -- more coming up as I
15 sit here -- to continue the discussion regarding the
16 proposed Phase 2 rulemaking effort necessitated by
17 legislative direction from AB 2296.

18 During the June Policy Committee meeting, staff
19 set the context for this item. At its June 18th meeting,
20 the Board reviewed three lists of issues that were grouped
21 based on staff's understanding of general stakeholder
22 agreement. The Board directed staff to move forward with
23 the stakeholders to develop draft regulatory language to
24 address issues listed in Group A and B and to continue to
25 work with stakeholders on Group C lists.

1 Since staff's presentation to the Policy
2 Committee last week, which provided further information on
3 the Group C issues, staff held a workshop with
4 stakeholders on draft regulatory language for the Group A
5 and B issues and further discussed the Group C issue list
6 this past week.

7 Significant progress is being made on the
8 regulatory language for Group A and B issues. Based on
9 the discussion of Group C issues today, staff is bringing
10 forward two suggested options for Board consideration and
11 is asking your direction to move forward to continue
12 working with stakeholders to develop draft regulatory
13 language for one or both of these options or another
14 option of the Board's choosing.

15 Bernie Vlach will be making today's presentation.
16 Bernie, under Bill Orr's direction, has led an excellent
17 staff team consisting of Richard Castle, Garth Adams, Mike
18 Wochnick, Shelly Bromberg, Andy Marenno, JoAnne Bryne, and
19 Elizabeth Castañeda to prepare the information before you.

20 And we have an overhead presentation, and there
21 are copies of the overhead in the back of the room for
22 those in the audience.

23 Also want to continue our thanks to the Water
24 Board who has been a very stalwart participant in all of
25 these activities. And of course to stakeholders and the

1 advisory group for continuing to work diligently with us
2 and coming to you with the suggestions.

3 With that, I'll turn it over to Bernie.

4 (Thereupon an overhead presentation was
5 presented as follows.)

6 BRANCH MANAGER VLACH: Good morning, Madam Chair
7 and Board members. My name is Bernie Vlach, Manager of
8 the Closure and Financial Assurances Branch.

9 This item is to present a brief update on the
10 informal rulemaking workshop held on July 17th and to
11 receive Board direction on how to proceed with the Group C
12 issues to develop draft regulatory language.

13 Staff and stakeholders reviewed the draft
14 language for Group A and B items and made on-screen edits
15 and comments to the draft language at their workshop.

16 Staff suggested and stakeholders agreed to move
17 the postclosure maintenance contingency and grandfathering
18 associated with that to Group C, pending further direction
19 from the Board on which approach staff should pursue
20 regarding the Group C issues. Staff is currently working
21 on the changes and to the Group A and remaining Group B
22 issues with stakeholders and will send out another draft
23 to stakeholders prior to the next staff workshop to be
24 held on August 4th.

25 --o0o--

1 BRANCH MANAGER VLACH: Mike Hullahan and
2 GeoSyntec a presentation at the July 17 workshop on behalf
3 of the SWIG Group on postclosure maintenance trends. This
4 presentation provided some information on a segment of the
5 landfills included in the Minnesota Closed Landfill
6 Program. The Minnesota Closed Landfill Program was
7 comprised of 112 pre-Subtitle D landfills that have been
8 voluntarily taken over by the state of Minnesota.

9 This group of landfills is not an apples to
10 apples comparison with the 282 landfills that are the
11 subject of these closure, postclosure financial
12 assurances. The Minnesota landfills in the program are
13 more similar to the 1500 pre-1988 disposal sites in
14 California. GeoSyntec identified some down trending
15 maintenance cost information from 30 of the low-risk
16 landfills in the Minnesota program. GeoSyntec's
17 presentation covered a ten-year period, and the landfills
18 do not typically have active landfill gas or leachate
19 extraction systems.

20 I think this is an important point, because it
21 has been suggested that reduced monitoring and control
22 costs would be on the basis of postclosure maintenance
23 reductions.

24 Staff has not found any documented studies that
25 show comparable Subtitle D PCM costs are decreasing.

1 California's own landfills have yet to show a downward
2 trend in postclosure maintenance costs. California
3 landfill operators can present documented information of
4 lower postclosure maintenance costs at any time and have
5 their postclosure maintenance financial assurances
6 mechanisms lowered accordingly.

7 Staff has run a one-half percent per year cost
8 decline in its forecasting model and noted a 20 percent
9 change to the overall systems cost as a result of the
10 assumption change.

11 It is important to note that other stakeholders
12 believe costs may be significantly higher and that other
13 factors could significantly increase the State's risk.
14 For these reasons, staff believes that the model is
15 adequate for policy decisions regarding long-term PCM
16 costs and risks.

Staff agrees that a properly designed, closed, and maintained dry tomb landfill should experience downward trends in the production of leachate and landfill gas. Further work and experience is needed to determine how these reductions translate into reduced costs. Staff is continuing to work with stakeholders through the CIWMB postclosure maintenance cost survey that will produce additional California-based cost data this fall.

25 --o0o--

1 BRANCH MANAGER VLACH: With regard to the Group C
2 issues, the exposure to the State resulting from the
3 long-term postclosure care of landfills can be divided in
4 three key areas: Divestitures, defaults, and level of
5 financial assurance. If these three areas are addressed,
6 the exposure to the State and risk to the rate payers will
7 be minimized.

8 --o0o--

9 BRANCH MANAGER VLACH: You've seen in this chart
10 before, but staff has updated it with this pink column,
11 which is something new, to separate the standards, single
12 private, and rural public defaults from the divestitures
13 defaults for easier analysis.

14 Key points from this slide include defaults
15 cannot be eliminated from the system's risks to the State.
16 Continuing a rolling 30 times postclosure maintenance
17 estimate appears to be the most effective tool to reduce
18 State risk, but has the potential effect of tying up a
19 large amount of capital.

20 Below a 15 times postclosure maintenance
21 multiplier the risk of the divestiture becomes very
22 significant to the State.

23 --o0o--

24 BRANCH MANAGER VLACH: There was general
25 agreement by stakeholders at the workshop that

1 divestitures should be separated from the other types of
2 defaults. And if addressed, would resolve the largest
3 source of potential risk.

4 Our proposed approach is to hold the prospective
5 buyer to a high standard of financial assurance as a
6 condition of sale. If a sale is proposed within the first
7 15 years of postclosure maintenance, the buyer would need
8 to match the same level as the seller. After 15 years of
9 postclosure, a buyer would be required to maintain a 15
10 times postclosure maintenance multiplier.

11 --o0o--

12 BRANCH MANAGER VLACH: In regard to addressing
13 the other types of defaults, staff concludes that these
14 risks cannot be addressed simply through individual
15 financial assurance.

16 On this topic, agreement amongst most of the
17 stakeholders present was split between a State-managed
18 pooled fund based on current legislative proposal or a
19 pooled fund coupled with indemnification of local
20 governments.

21 The modeling analysis of the fund size was not
22 based on indemnification which would require a fund sized
23 to cover the entire system cost.

24 Staff suggests the Board consider two options for
25 a pooled fund. First, a pooled fund on the order of the

1 current legislative proposal funded at 15 cents per ton,
2 or with statutory change an augmentation of the Board's
3 existing solid waste cleanup trust fund to be used for
4 this purpose as well, 15 cents per ton.

5 --o0o--

6 BRANCH MANAGER VLACH: Now I'm going to walk
7 through the next two slides will be the two options that
8 the staff is suggesting.

9 Option 1, start with a 30 times multiplier that
10 would be stepped down or rolled down to a 15 times
11 multiplier based on performance. This option would
12 engender a 96 to \$170 million risk to the State over 100
13 year period.

14 The benefits of this option are that it minimizes
15 Divestiture defaults. It minimizes the morale hazard of
16 walking away. And there would be no postclosure
17 maintenance contingency necessary.

18 --o0o--

19 BRANCH MANAGER VLACH: The second option would
20 start again at 30 times, which is the current system and
21 draw down to 15 times. From there, there would be a step
22 down to a five times based on performance.

23 This option would require in staff's view a
24 pooled fund as a backstop for defaults. And the defaults,
25 the exposure to the State with this option, would be

1 somewhere between 96 and \$204 million over 100 years.

2 The benefits of this option are that it addresses
3 divestiture defaults by imposing the 15 times multiplier
4 for the buyer with the step down option.

5 And, again, this option would require no
6 postclosure maintenance contingency.

7 One course of action for the Board is to proceed
8 to develop regulatory language for Phase 2. And if a
9 pooled fund were to be enacted this session, adjust the
10 regulations accordingly during that process.

11 Now I'd like to summarize these options in this
12 way. The choices in terms of the direction from staff are
13 you may choose between a step down or a draw down from the
14 current 30 times multiplier to some lower level. Staff
15 does not recommend stepping or drawing down below the 15
16 times multiplier without a pooled fund in place.

17 The differences between the step down and the
18 draw down are fairly simple. The draw down would be an
19 entitlement. It's akin to the status quo. The step down,
20 however, would have to be earned by a good operational
21 record.

22 Now the step down has certain implications for
23 some operators who are currently using cash value
24 mechanisms or insurance for postclosure maintenance.
25 These operators may find the use of these funds

1 interrupted for five or more years if they cannot meet the
2 good operator test or if they choose -- they may choose an
3 alternative mechanism. They would need to find other
4 funds or choose an alternative mechanism for postclosure
5 maintenance for that period. The details could be worked
6 out in regulation.

7 Also staff recommends that a ten percent PCM
8 contingency be in place if the draw down option is chosen.

9 --o0o--

10 BRANCH MANAGER VLACH: Now after today's meeting
11 and the direction --

12 CHAIRPERSON BROWN: Bernie, can I clarify? Both
13 of the options that were given to us originally in the
14 slides, neither of them had a contingency suggested. And
15 in your comments, you're now suggesting on one of them
16 there should be a ten percent contingency.

17 Can you clarify that with me before we go
18 further? Because I'm going to be confused later on if I
19 don't now. It says no PCM contingency on Option 2. And
20 no PCM contingency on Option 1.

21 BRANCH MANAGER VLACH: Okay. If you look at the
22 first bullet on Option 1, it says step down. I guess this
23 is confusing. I'm sorry. If the Board were to choose to
24 draw down rather than step down --

25 CHAIRPERSON BROWN: I thought that it was Option

1 2.

2 PROGRAM DIRECTOR RAUH: That's correct. But
3 Option 2 has a pooled fund.

4 I think what we're saying is that without a
5 pooled fund, if you chose to roll down from 15 to 30, we
6 would suggest that you consider the PCM contingency. But
7 neither of these two options we're suggesting have that in
8 it.

9 BRANCH MANAGER VLACH: After today's meeting,
10 staff is proposing to hold two workshops, one next Monday
11 and then one following Wednesday. And these workshops
12 would be intended to share with stakeholders any draft
13 language we would have for Group C.

14 We'd have to work pretty hard between now and
15 Monday to do that. But we've already got some ideas.

16 Also we would use that opportunity to address any
17 unfinished business from Groups A and B. There are a few
18 issues remaining. The County of Los Angeles Solid Waste
19 Committee has raised some issues with regard to the
20 differences between postclosure maintenance and corrective
21 actions. And we can use that opportunity to help resolve
22 those issues with the County of Los Angeles.

23 And then on August 11th, we would be coming
24 before the Board requesting formally permission to
25 establish a formal 45-day comment period for rulemaking on

1 these regulations.

2 --o0o--

3 BRANCH MANAGER VLACH: Now I want to mention a
4 couple of unresolved issues that we will continue to be
5 working on, and they're not necessarily tied to this
6 schedule. But we will be continuing to work on them into
7 the fall.

8 We propose having an additional workshop in the
9 fall that will be scheduled between the Phase 2
10 rulemaking -- and between the submittal of the Phase 2
11 rulemaking to OAL when the comment period starts.

12 The two issues that we went to address in the
13 workshop would be, one, staff has been working with the
14 environmental stakeholders to develop a modeling scenario
15 to extraordinary recorrective actions. These are
16 extraordinary events that would require funding
17 significantly above the amount that could be covered by
18 piggybacking on the Water Board's corrective action
19 program.

20 The current scenario that we've been -- and we
21 have been working with the environmental stakeholders on
22 this, but there's more work that needs to be done. The
23 current scenario exceeds the capabilities of the model
24 that staff has been using, and staff will continue to work
25 with the stakeholders on this issue.

1 And the second issue is the result of the PCM
2 cost survey initiated with the industry stakeholders
3 should be available after August and will be further
4 discussed with the advisory group. If the study results
5 impact staff's analysis, then we'll bring it back to the
6 Board.

7 And this concludes my presentation.

8 CHAIRPERSON BROWN: Yours too, Ted?

9 PROGRAM DIRECTOR RAUH: Yes.

10 CHAIRPERSON BROWN: You were looking at and me
11 and I thought maybe you were going to chime in before I --

12 PROGRAM DIRECTOR RAUH: I think we've said
13 enough. We'll wait for questions.

14 CHAIRPERSON BROWN: We'll wait to see what
15 everybody else says about what you said.

16 We have a couple of speakers so why don't we have
17 them come forward. First speakers is Chuck White.

18 MR. WHITE: Thank you, Madam Chair, members of
19 the Board. Chuck White with Waste Management.

20 Also here beside me but not present is Chuck
21 Helget of Allied Waste. He couldn't be here today, but
22 good news is get two Chucks for the price of one.

23 BOARD MEMBER CHESBRO: Please don't make us
24 chuckle.

25 MR. WHITE: I do appreciate the effort that the

1 staff and particularly Ted gave us both chucks a call
2 yesterday as well as others to give us a heads-up of where
3 things are going on the options that are presented to the
4 Board this morning. It's really been a long and arduous
5 process. And we really think we are getting pretty darn
6 close to where we're going to end up. And it's owed in
7 large part to the efforts of Ted and the staff and others
8 that have been working on this diligently. It's been a
9 painful process, but we think we're coming to a point
10 where we can see light at the end of the tunnel.

11 We're pleased to know one of the options, Option
12 2, involves a pooled fund. As I've testified repeatedly
13 before this Board, Waste Management believes a pooled fund
14 is a most efficient way to ensure the State has adequate
15 resources to resolve these potential defaults, which we
16 think are going to be few, but there's still the
17 possibility exists.

18 So we hope a clear direction from the Board today
19 is in support of Option 2 with respect to a pooled fund.

20 We think the solution to the divestiture as staff
21 indicated making sure that new owners are able to take
22 adequate care when the transition -- it's a much more
23 efficient way to do it that way than any other. The devil
24 is in the details how we work out that process. But you
25 have our commitment to work positively towards that end.

1 The default issue can be handled totally by the
2 pooled fund. If you go back to that table that was showed
3 earlier -- and you don't have to pull it up -- but the
4 pooled fund at 15 cents per year over as long as you
5 maintain that pooled fund would generate \$6 million
6 over -- that table is based on a 100-year period. There's
7 more than enough revenues to cover all the options
8 depending on where you have a 30 year, 15 year, five year,
9 or status quo to cover any potential defaults. And so we
10 really think the pooled fund by far and away gives the
11 State adequate assurance on all these options.

12 The issue that's in parallel with Option 2 that
13 is the provision of financial assurance, staff has come a
14 long ways as we understand the draw down process to 15
15 year. It's beginning to look more like a shared
16 responsibility between the state and the operators at
17 achieving the ultimate resolution of postclosure care
18 through financial assurance.

19 I've testified previously that we preferred the
20 Subtitle D approach where the State can adjust the
21 postclosure care period up or down. This puts more burden
22 on the operator, which we are willing to assume. We'd
23 like to continue to work with the staff on more details on
24 how this draw down process will work and how we would
25 transition to a rolling 15 years and then

1 performance-based down further. And we can have those
2 discussions in the upcoming weeks and look forward to the
3 meetings on the 4th.

4 So again the bottom line for us today is really
5 hope we get clear direction from the Board to the staff to
6 proceed with something akin to Option 2 coupled with a
7 pooled fund. And we think that is really the most
8 effective and efficient way. And certainly consistent
9 with AB 2866.

10 I have my colleague Kent Stoddard here if anybody
11 has any questions related to the pooled fund that is
12 currently being considered by the Legislature. And I
13 thank very much for the opportunity to speak to you today.

14 CHAIRPERSON BROWN: Thank you, Chuck and Chuck.

15 Any questions?

16 Next speaker is Glenn Acosta.

17 MR. ACOSTA: Good morning, Madam Chair and Board
18 members. I think progress has been made. And we
19 appreciate allowing time for stakeholders to participate
20 and engage with staff and trying to get to the end point.

21 And we also appreciate handling divestitures
22 separately through a financial criteria for the
23 acquisitions. I think that's a great direction to go.

24 I think the one point of disagreement that we
25 have is we feel that the 15 year rolling is excessive for

1 various reasons. One is if you do handle divestitures
2 separately and you remove that from the table that you see
3 up there, the five year rolling provides a same level of
4 protection essentially as a 15 year rolling. So it makes
5 no sense to hold three times the money if you're not going
6 to get a real benefit out of it.

7 The other reason is if you have a pooled fund,
8 that's essentially a hedge or an insurance policy against
9 defaults. And you're adding a second layer or second
10 insurance policy to prevent defaults by holding that much
11 money, 15 years' worth. Or in the case of trust funds,
12 half the money that the operator put in.

13 And then the third reason is, you know, this
14 would impact trust funds more than the other
15 demonstrations, because a 15-year demonstration means that
16 much money you can't touch. The principle is tied up.
17 And just when you need the money the most is when you
18 don't have it. So the operator spent all this time during
19 the operating life to put the money in, but now you can't
20 take that money out to use it for its intended purpose.
21 It's almost tantamount to a taking of local public funds.

22 So we feel very strongly that 15 years is really
23 excessive, particularly when you couple that with a pooled
24 fund.

25 Thank you very much.

1 CHAIRPERSON BROWN: So you're favoring Option 2
2 or Option 1 or a hybrid? Tell me exactly where you are,
3 because it sounds like you're favoring two, but you don't
4 support the pooled fund.

5 MR. ACOSTA: I think previously as SWIG did, we
6 like the idea of a small pooled fund on the order of 15
7 cents per ton to provide insurance to the State against
8 defaults.

9 And at that time, there was talk about a ten
10 percent contingency and no change in demonstrations.
11 However, I think we are willing to at least entertain the
12 idea of a five-year rolling coupled with a small pooled
13 fund on the order of 15 cents per ton. I think that's
14 more palatable than what we've seen to date. Thank you.

15 CHAIRPERSON BROWN: Thank you, Glenn.

16 Next speaker is Larry Sweetser.

17 MR. SWEETSER: Good morning, Board members.

18 Larry Sweetser on behalf of the Rural Counties
19 Environmental Services Joint Powers Authority.

20 I did come prepared. A picture being a thousand
21 words, I have my, "No Pooled Fund" button.

22 Also appreciate staff's efforts in this regard.
23 Been a lot of conversations, some pretty loud ones. I
24 don't think it's been mentioned yet, but I've been
25 monitoring the Board for many years. And I don't see any

1 issue you've ever dealt with that has the order of
2 magnitude of risk out there or the amount of money
3 involved when you consider all the closure/postclosure
4 funds. So it's a very important issue. And again, we
5 appreciate all staff's efforts.

6 One note on Bernie's slides, you mentioned there
7 was some default agreements. We're still adamant of no
8 pooled fund whatsoever as the button implies.

9 Initially the pooled fund was sort of thought of
10 as a sink or swim together approach. It's been
11 interesting lately in some of the discussions in the
12 meetings we've had and even at last week's Board meeting,
13 there's been more of a thought of looking at the pooled
14 fund I think the slide shows it too where for
15 jurisdictions there may be more of a need for a short-term
16 fix or short-term access to funds. And I think that's
17 fairly true. We're experiencing that in one of our
18 counties right now.

19 But it does raise some equity issues in terms of
20 if that's the way the pooled fund will work, if it's more
21 of a short term for public sector versus short term and
22 long term for the private sector, that does raise some
23 issues. And I'm not trying to start a public versus
24 private war. But that's been one of our concerns from the
25 beginning is having the equal access if such a fund

1 developed. Hence, that's why we remained opposed.

2 So my question would be -- secondly, the other
3 question that's come up is how to maintain this fund over
4 a period of time making it solvent. And one thing the
5 Board needs to make sure -- and I think it's pretty well
6 aware -- making sure it's not an easy access. That
7 anybody that wants to can get access without some rigorous
8 review. That would also include the current cost
9 estimates we have out there now. A lot more scrutiny of
10 whether those are realistic. I think the data is out
11 there to look at that. Staff has done some review of
12 existing costs. I think just by that exercise alone will
13 minimize the need for any pooled fund or even reduce some
14 of the risk.

15 And you also will need some form of cost
16 recovery. That's also an equity issue of concern to us in
17 that local governments won't be going away. They may have
18 some short-term problems, but they're going to still be
19 there for cost recovery as opposed to some cases where
20 somebody could close a site and walk away and even leave
21 the country. They don't have the ability for cost
22 recovery. So there is an inequity issue there. That's
23 one of our concerns.

24 There's no doubt that local government can
25 benefit from that. Rural counties tend to benefit more

1 from something like this fund. We have less resources,
2 less cash available. We have a lot of the small unlined
3 sites. Potentially more contamination issues.

4 So I thought I would address why we've been
5 opposed to the fund, and you mentioned a few things
6 already. But quite simply, we repeatedly presented
7 arguments pros and cons to our members, and they are
8 adamant they don't want to provide into a fund where they
9 have to pay for someone else's issue. They would rather
10 pay for their own issues themselves. If that means
11 holding their feet to the fire more on the cost estimates,
12 so be it. They are just are adamant no pooled fund.

13 The timing is another interesting issue. We've
14 got -- there's legislation pending. We have been opposed
15 to that. But we'll know shortly whether that bill gets
16 out. If it does, it goes to the Governor's desk. And if
17 he signs it, it's sort of a mute point whether a pooled
18 fund or not. If he doesn't sign it, then the Board is
19 faced with trying to get statutory authority for a pooled
20 fund, which will take at least another year or more to do
21 that.

22 We would encourage you to go forward with
23 existing proposals without the pooled fund. The
24 divestiture issue is not as much of an issue for us. But
25 given that slide showing what the risk would be, we

1 definitely understand and support the need for more
2 controls. It's pretty rare if a public sector site sells
3 a site to a landfill. I do know some cases where a
4 private operator sold sites to public entities. And there
5 were a number of issues that showed up later that could
6 have been avoided by tighter controls up front. So we
7 would support more controls that way.

8 So basically in conclusion, we would support more
9 of an Option 1. We do agree with Glenn and L.A. County
10 San's position on the five year would be better. But we
11 definitely would rather see no pooled fund.

12 So, lastly, if anyone wants any more buttons, I
13 have a few more in my pocket here. Thank you.

14 CHAIRPERSON BROWN: I see Kent raising his hand.
15 He'd like to take them all from you and distribute them
16 for him.

17 Evan, you're next.

18 MR. EDGAR: My name is Evan Edgar, engineer for
19 the California Refuse Removal Counsel. We are a lot
20 closer to option number one. I think that with the
21 exposure to the State minimized and minimize divestiture
22 and minimize immoral hazard, I think within existing
23 authority the Waste Board can move forward with Option 1
24 concept. And we participate in that.

25 One of the aspects we were advocating in the past

1 is a perpetual care model, because it was one way to
2 minimize the risk. I believe that Option 1 modified can
3 do that as well. So we're open to the Option 1 to move
4 forward with it. And right now, we're opposing to pooled
5 fund today. Thank you.

6 CHAIRPERSON BROWN: Thank you, Evan.

7 And I think our last speaker is Rachel Oster.

8 MS. OSTER: Good morning, Madam Chair, members of
9 the Board. I'm Rachel Oster with Norcal Waste Systems.

10 First, I do want to thank staff for working with
11 the stakeholder group and advisory group on coming to some
12 resolutions on Group A and B. I think we had some good
13 successes with that and some agreement.

14 However, with the two Group C options that are
15 before you today, we think that both of them are still
16 creating a competitive disadvantage to operators that are
17 funding with trust funds. They'll require us to tie up a
18 large amount of capital creating a pay-as-you-go scenario
19 from a non-revenue generating entity.

20 The second option again layers multiple
21 mechanisms unnecessarily. We do believe that one
22 mechanism should be enough, and we support the pooled fund
23 option. However, we do understand that staff feels the
24 pooled fund should be supported by another mechanism. But
25 we would like to see a less capital-intensive mechanism

1 coupled with the State fund, perhaps a contingency, and
2 something that will not disproportionately effect those
3 funding the postclosure care of the trust fund.

4 So we do look forward to working with staff
5 coming to resolutions on Group C.

6 CHAIRPERSON BROWN: Thank you, Rachel.

7 Questions, comments from the Board? I'll start
8 to my left with Cheryl.

9 BOARD MEMBER PEACE: All these things are just
10 rolling around in my head.

11 We heard at the last stakeholder meeting the
12 operators were saying the GeoSyntec report that said gas
13 and leachate production goes down. I don't think we've
14 seen any costs go down. And the costs to maintain those
15 systems haven't been going down. I mean, even if the
16 leachate and the gas goes down, you still have to maintain
17 those systems. And it's going to cost to do that. And
18 again, the leachate and the gas go down as long as you
19 keep it dry.

20 And I think someone mentioned from Kern County
21 that dry tombing is just really actually postponing all
22 the costs and the problems, because you're not allowing
23 mother nature to takes its course.

24 So I think at some point somebody is going to
25 have to be responsible for these. And to me, it seems

1 like the State is probably going to be the one that is
2 going to be responsible. Maybe not in 15 years from now
3 or 30, but when you look at 50 or 100, it seems like the
4 State is going to probably be the one ultimately
5 responsible. It seems that's why we need the pooled fund.

6 One of my questions was when you look at the
7 pooled fund and the Option 2, how come you don't need a
8 postclosure maintenance contingency? Why is the reason
9 there?

10 BRANCH MANAGER VLACH: Well, the option includes
11 a step down from 15 to five. Not everyone is going to be
12 able to take advantage of that step down because some
13 operators that have constructed and operated and
14 maintained their sites will be able to, but others will
15 not. So our staff's feeling is that when there is a step
16 down option in place then the contingency isn't necessary.

17 BOARD MEMBER PEACE: Isn't the contingency for
18 cost overruns?

19 BRANCH MANAGER VLACH: The contingency is for
20 unforeseen costs that would occur during the postclosure
21 maintenance period. And those operators that would not be
22 able to take advantage of the step down would maintain a
23 higher level of postclosure maintenance funds in their
24 account, and we feel that would be sufficient. For those
25 that operated well and could step down, we wouldn't have

1 that concern.

2 BOARD MEMBER PEACE: I thought they figured how
3 much they were going to need to maintain it and then put a
4 contingency on top of that for, you know, inflation and --

5 BRANCH MANAGER VLACH: Inflation is handled
6 separately. Any postclosure maintenance costs would be
7 subject to inflation adjustments on an annual basis.
8 That's the current system and that would continue.

9 CHAIRPERSON BROWN: So it doesn't change the
10 current system. But you're saying with the pooled fund,
11 no PCM contingency is necessary. Because in the event
12 that there is some catastrophic or unseen event, the
13 pooled fund would be able to handle that. And as we
14 discussed last week, the pooled fund in order to draw into
15 it, they would have to have a repayment plan as part of
16 it; is that correct?

17 BRANCH MANAGER VLACH: Yes, ma'am. We support
18 the concept of cost recovery and payment of the fund,
19 whether it be a loan or some other cost recovery
20 mechanism.

21 BOARD MEMBER PEACE: You're saying the
22 contingency, because if they need more money, they'll take
23 it out of the pooled fund.

24 CHAIRPERSON BROWN: And then pay it back.

25 BOARD MEMBER PEACE: If we can get it back.

1 BRANCH MANAGER VLACH: The answer is really two
2 fold. With the step down, there's -- we don't feel the
3 contingency is necessary. And when you layer on to that a
4 pooled fund --

5 BOARD MEMBER PEACE: Staff doesn't think the
6 contingency is necessary or industry doesn't think?

7 BRANCH MANAGER VLACH: Staff does not feel that
8 way.

9 BOARD MEMBER PEACE: You don't think it's
10 necessary?

11 BRANCH MANAGER VLACH: That's why I made my point
12 earlier. If there was simply a draw down -- however the
13 mix turns out. If there is simply a draw down, we would
14 feel the contingency was necessary, except if there was a
15 pooled fund. And there currently is no pooled fund.
16 That's something that the Board already knows.

17 PROGRAM DIRECTOR RAUH: If I might add too, some
18 of the other provisions of regulation that we're
19 developing go to the heart of the cost estimates and
20 improve those cost estimates and improve the staff's
21 review and the frequency with which we'd be looking at
22 them. So there's really -- we're coming at this problem
23 from the perspective as tightening up the cost, as Larry
24 Sweetser indicated, as well as these other mechanisms that
25 give us the assurance the risk is managed.

1 BOARD MEMBER PEACE: I can see where you're going
2 with Option 2 with the pooled fund and I can go along with
3 that. But we don't know if we're going to have a pooled
4 fund. So since we don't know if it's going to pass, we
5 have no control over that.

6 BRANCH MANAGER VLACH: In my presentation, I
7 suggested that one option for the Board would be proceed
8 with the regulatory package --

9 BOARD MEMBER PEACE: Under the assumption we
10 don't have a pooled fund.

11 BRANCH MANAGER VLACH: But if the pooled fund
12 should materialize, we could change language. For
13 example, if we propose language with the contingency, if
14 the pooled fund came in, we could take the contingency
15 out.

16 BOARD MEMBER PEACE: So you're saying that if
17 there is no pooled fund, we start developing that. You're
18 still saying you're going to have a rolling 15. I'm
19 wondering how come -- because the 30 year is the one that
20 has the least exposure to the State and the taxpayers. So
21 why wouldn't you have gone with that one?

22 BRANCH MANAGER VLACH: Well, the 30-year
23 multiplier does -- if we had that chart back up. You're
24 right. It does provide the lowest risk to the State, but
25 it also would precipitate a number of defaults by

1 operators. They would have their -- particularly those
2 with trust funds and insurance, they would not be able to
3 access those moneys immediately. And there would be a
4 higher level of defaults, and it also ties up --

5 BOARD MEMBER PEACE: There's a higher level of
6 default with the 15, not the 30.

7 BRANCH MANAGER VLACH: You're correct.

8 BOARD MEMBER PEACE: There's higher defaults with
9 the 15. So why wouldn't we want the 30 if there's no
10 pooled fund? Because that's least exposure to the State
11 and to the tax payers.

12 BRANCH MANAGER VLACH: If you look at the green
13 and the yellow columns, which I'm sure you have looked at,
14 the ratio between the two you can see is heavily skewed
15 towards the green. Like a three-to-one or four-to-one
16 ratio. And whereas, if you look at the status quo, it's
17 almost just the opposite.

18 So I guess the question -- and this is entirely
19 up to you. You know, you can choose the 30 times and
20 rolling 30 if that's your choice. But the staff is simply
21 presenting the information so that you can see at what
22 level the Board wants to acquire assured risk as opposed
23 to allowing a certain portion of uninsured risk. The more
24 insured risk that you require, it appears that the State
25 has a higher assurance. Of course it does. But it also

1 ties up capital that the operator could be using for other
2 purposes.

3 So staff has developed this pink and red area to
4 indicate what we think are -- out of that yellow part what
5 portion of that would really possibly default. So we made
6 the distinction between the red and yellow. The yellow is
7 not assured, but based on what we feel is the operational
8 record of the industry, we don't feel that amount is
9 necessarily going to default. So we have predicted what
10 the default would be. And that's more in the red area and
11 pink area. So it's a matter of how much capital do you
12 want to tie up in the industry versus the risk that you're
13 being presented that shows over on the right-hand column.

14 BOARD MEMBER PEACE: When you talk about what the
15 operational performance of the industry, you said they had
16 been performing well so --

17 BRANCH MANAGER VLACH: Well, ICF conducted a
18 study and we took the results and we adopted their
19 results. And it showed that the industry has a fairly
20 good history of remaining solvent. So we're not worried
21 too much about the players currently that are -- and
22 whether or not they're still going to be around over the
23 long term. So those default rates, if you will, are built
24 into the model, and they represent the red area and the
25 pink area. And they show that even though there is an

1 unassured risk that that really -- if you look at their
2 history, that probably will not -- the yellow area
3 probably will not ever become red entirely. That only a
4 small portion of it will ever become red. And that's the
5 area they would default. You do some unexpected
6 circumstances.

7 So that's what I mean by the industry's past
8 performance. There's a certain default rate that every
9 industry has, and the waste industry has its own rates and
10 those are the ones we use in the model.

11 BOARD MEMBER PEACE: Just kind of hear about --
12 things rolling around in my mind. And we just heard the
13 gas probe study that shows 30 percent of the probes tested
14 were non-functioning. Those probes are only ten to
15 20 years old. So are they factoring in all of those kinds
16 of costs? We talk about these costs of --

17 BRANCH MANAGER VLACH: As Ted was saying earlier,
18 we're approaching this problem from various perspectives.
19 One of them is, of course, the financial assurance end.
20 But coupled with that is the tightening up the minimum
21 standards. And this gas probe regulation are an example
22 of that. Also getting better cost estimates --

23 BOARD MEMBER PEACE: Giving an example not doing
24 what they're supposed to do. They're already supposed to
25 have their plans in for approval and the implementation

1 by, what, 9-21 of '08 and only 20 of the landfills even
2 have submitted their documents.

3 CHAIRPERSON BROWN: I think that we're going to
4 be taking up in August. And we can assure those that are
5 here that we will be taking that item up in August.

6 BOARD MEMBER PEACE: Plus the fact that many of
7 the landfills aren't even in compliance with their
8 corrective actions, financial assurances for the water
9 quality financial assurances. They're not even in
10 compliance with those.

11 BRANCH MANAGER VLACH: Yes, ma'am. And you know,
12 our staff proposal in part A and part B would assure that
13 that problem is resolved and probably within the next five
14 years.

15 So as Ted said, we're approaching this and
16 tightening up these regulations in different ways. But
17 the goal is to minimize the risk to the State by
18 increasing -- upgrading our minimum standards and ensuring
19 that there is the proper level of financial assurance.

20 CHAIRPERSON BROWN: I think it does -- from my
21 perspective, it strikes a balance between acknowledging
22 the fact we have a very good and very thorough system for
23 financial assurance here in California and for postclosure
24 maintenance. But also acknowledges the fact that there is
25 more that can be done. That we can assure the State some

1 greater sense of if something were to happen that there is
2 some options, backups.

3 But, you know, I appreciate the fact that the
4 staff has really looked at a balanced approach to making
5 sure that we look at what our options are to minimize risk
6 to the State for any sort of a catastrophic failure,
7 whether Option 1 or 2. I think we'll continue that
8 discussion.

9 But, you know, we are continuing to improve our
10 regulatory processes here in California. We are looking
11 at the study next month. And the plans that are or aren't
12 coming forward, that is something that we really do need
13 to discuss. You know, the study we did on the
14 effectiveness of probes is something that's not been done
15 anywhere else in the country. So the fact we are looking
16 at the probes in advance of closure and upgrading and, you
17 know, continually improving the system and the regulation
18 of the industry here in California means that we're
19 continuing to do our job.

20 So appreciate the thorough analysis participation
21 with the stakeholders and really looking at where we can
22 strike that assurance for the State as well as not going
23 overboard. Because I do think it's important from my
24 perspective if they do have access to some of the revenue
25 to continue to improve the system, move waste out of the

1 landfills and they reinvest in the industry.

2 Do you have any questions? Gary? Rosalie?

3 BOARD MEMBER MULÉ: That was very well said,
4 Madam Chair. Thank you very much. Because we all are
5 aware that this is a very important and significant issue.

6 And I do want to commend staff and all the
7 stakeholders for all of your hard work on this issue over
8 the last several years. It's been a long process. And as
9 I've stated previously, we have accomplished a lot. We've
10 come a long way through quite a bit of discussion,
11 sometimes heated.

12 But it seems like we agree on more than we don't
13 agree on. So we do have these few issues that we need to
14 finalize.

15 I do have a question for staff though. On the
16 either option -- well, on Option 2, for example, what
17 would happen if we did not have a pooled fund? For
18 example, if the current bill that's in the Legislature
19 doesn't pass, would that then change the contingency
20 provision then or how would that work?

21 BRANCH MANAGER VLACH: Well, that's a good
22 question. If you were to give us direction to proceed
23 with Option 2, we would probably ask that the regulations
24 would include a contingency until such time as we became
25 more clear about whether the pooled fund would become a

1 reality. Because Option 2 does start with 30, but it's a
2 draw down to 15.

3 So we would probably recommend that we write the
4 regulations to show a draw down to 15 with a contingency.
5 And then later on in the fall as it becomes more clear as
6 to what's going to happen with that bill, we still would
7 have take to make the changes in the regulations to take
8 the contingency out.

9 BOARD MEMBER MULÉ: So we could include the
10 contingency until we know for certain whether or not a
11 pooled fund will become a reality.

12 BRANCH MANAGER VLACH: That seems like a
13 reasonable approach.

14 BOARD MEMBER MULÉ: And again I agree with Chair
15 Brown that we really do need to strike a balance in terms
16 of -- we don't want to tie up too much capital so that the
17 operators are restricted in pursuing recycling and waste
18 diversion activities.

19 So again, I think we're really honing in with
20 those two options. And again I guess I'm leaning towards
21 Option 2, but I just wanted to make sure that we're
22 planning or we're developing the regs with and without a
23 pooled fund. Thank you.

24 BOARD MEMBER PEACE: Didn't you say we could move
25 ahead with both of these options, Option 1 and Option 2,

1 and that the pooled fund -- if that 2866 is passed --

2 BRANCH MANAGER VLACH: Well, in development of
3 the regs, we would have -- you would have to give us
4 direction as to whether we wanted a step down or draw
5 down.

6 CHAIRPERSON BROWN: So we have to pick on part of
7 it. But we can also develop regs for a pooled fund that
8 would not be utilized unless the pooled fund passed.

9 But I'm unclear on the divestiture issue. On
10 Option 1, it just says minimizes divestiture. And Option
11 2 it says that -- addressed divestiture by the 15 times
12 buyer with step down. Explain the difference between the
13 two on divestiture.

14 BRANCH MANAGER VLACH: With Option 1, the step
15 down is to 15 times. And that in itself will minimize
16 divestiture. If you did nothing else because there's --
17 the operator has a substantial amount of money invested in
18 postclosure maintenance and any buyer would have to pick
19 up that same level.

20 CHAIRPERSON BROWN: So it's basically the same.

21 BRANCH MANAGER VLACH: It's intrinsic to it.
22 With Option 2, if they were to step down to five, for
23 example, the buyer would have to assume 15. And that then
24 effectively does the same thing as Option 1.

25 CHAIRPERSON BROWN: Just wanted clarification.

1 Sorry, Cheryl, to interrupt.

2 BOARD MEMBER PEACE: I was going to say, can we
3 go like both ways. Sort developing Option 2, but if the
4 pooled fund doesn't pass, then we need to go with Option
5 1?

6 BRANCH MANAGER VLACH: Well, I suppose that's
7 possible. If we proceeded with Option 2, which is a drawn
8 down to 15 and if the pooled fund didn't materialize, we
9 could change the regulations to say a step down to 15.
10 And then the contingency would come out.

11 CHAIRPERSON BROWN: Right. That may be --

12 BOARD MEMBER MULÉ: Well, I guess I'm concerned
13 with doing the step down.

14 CHAIRPERSON BROWN: I think he said do the draw
15 down. And if the pooled fund doesn't pass -- what Bernie
16 is suggesting is Option 2.

17 BOARD MEMBER MULÉ: Right. But that's my concern
18 is if we do -- if the pooled fund doesn't pass and then we
19 do the step down, that's what you're saying.

20 CHAIRPERSON BROWN: He said rather than have the
21 staff move forward on two sets of regs at the same time --
22 because that's basically what it would have to be. You
23 wouldn't necessarily be able to just substitute roll
24 down/draw down. Because it's not just a substitute of
25 wording. It's actually language.

1 BOARD MEMBER MULÉ: It has significant financial
2 impact.

3 CHAIRPERSON BROWN: So what I'm hearing though is
4 that there's more support of Option 2. I'm just assuming
5 that because that's what Cheryl is asking about. There's
6 more of support of an Option 2.

7 In the event there is not a pooled fund created,
8 then we need to go back and look at whether a ten percent
9 contingency or a re-evaluation of a step down would be
10 done at that time. So we can have that option.

11 BOARD MEMBER PEACE: Because we need to know
12 whether there is a pooled fund or not.

13 CHAIRPERSON BROWN: That would be the trigger.

14 BOARD MEMBER PEACE: When will we know? Does
15 anybody have any idea when --

16 CHAIRPERSON BROWN: Well, the Legislature
17 adjourns the second, third week in August -- Elizabeth,
18 end of August.

19 MS. HUBER: Last day of August.

20 CHAIRPERSON BROWN: I can't remember, election
21 year, non-election year.

22 BOARD MEMBER CHESBRO: We may not know until the
23 end of September.

24 CHAIRPERSON BROWN: Believe me they'll be signed
25 on September 30th at midnight.

1 MS. HUBER: 11:59.

2 CHAIRPERSON BROWN: But that would still be
3 adequate time in the fall for us to make some changes.

4 Quite frankly, I'm not going to comment. I said
5 quite frankly we'd know at least one trigger by the end of
6 August if the bill passes and it has the State pooled fund
7 created.

8 BOARD MEMBER CHESBRO: Or if it doesn't pass.

9 CHAIRPERSON BROWN: If it doesn't pass, then we
10 immediately have to take up consideration of contingency
11 versus draw down or step down.

12 And Gary, Wes, I don't know if you have any --

13 BOARD MEMBER PETERSEN: No.

14 BOARD MEMBER CHESBRO: Only a general comment.
15 That the problem with this -- and of course it's what the
16 Legislature always wrestles with, is you have just a wide
17 vary of circumstances that are impacted by this. That
18 it's really hard to figure out the mechanism that is fair
19 and reasonable for all parties. Because you have
20 everything from tiny -- as Larry said, tiny rural
21 facilities to modern highly engineered technological
22 marvels, you know. So how you have a system that
23 accommodates all of that is really our challenge.

24 BOARD MEMBER MULÉ: And the risk. The risk all
25 these facilities carry is so great.

1 BOARD MEMBER CHESBRO: It has many moving parts.

2 BOARD MEMBER PEACE: You talk about the
3 differences. Does staff ever consider treating like the
4 mega landfills differently from the smaller landfills? Is
5 that ever brought up in any of your talks about treating
6 different landfills differently? Like if the mega
7 landfills had 41 year multiplier or something so they had
8 perpetual care versus the smaller ones or single ones? Do
9 we have to treat them all the same?

10 BRANCH MANAGER VLACH: Well, we considered that,
11 but it seemed like a --

12 CHAIRPERSON BROWN: Pandora's box.

13 BRANCH MANAGER VLACH: It's one of those slippery
14 slopes you start down. And I think it would be very
15 difficult to implement a program that way.

16 CHAIRPERSON BROWN: I think it probably would be
17 more easier if there was a clear definition from one to
18 the other. But we've got such a variety between small --
19 and we really have landfills that cover the entire
20 spectrum all the way to the large. So how do you make
21 that differentiation whether you fall into the very small,
22 the middle, the big, the this, the that. And then there's
23 the equity issue, the investment and the upkeep. So it
24 does seem like it might be a slippery slope.

25 BOARD MEMBER CHESBRO: Well, in spite of what I

1 just said about considering a wide variety of facilities
2 and circumstances, I also think it's important to --
3 regardless of which facility it is, think in terms of
4 having to be conservative and have the most resources
5 available to take care of the potential problems that are
6 out there.

7 And this is sort of digressing if you don't mind.
8 I don't know if any of you ever see Huell Howser on NPR.
9 He was out in Fort Bragg where they used to dump garbage
10 into the ocean. And they had the town historian who was
11 trying to explain what people were thinking when they were
12 dumping their garbage into the ocean. And now we hope
13 nothing that's being done in California today is
14 equivalent.

15 But nonetheless, we're not going to be on this
16 Board presumably at the time. But -- or else we'll be
17 really old. But someone out in the future to have to
18 explain why we hadn't adequately thought through the
19 contingency of what happens when the epicenter of the
20 earthquake is directly at the landfill. As hard as it is
21 to think like that.

22 It reminds me of another analogy, the hospital
23 seismic retrofit. It's incredibly expensive and
24 incredibly painful. But do you want the hospital falling
25 down when the earthquake happens? No.

1 We have to be concerned about the contingencies,
2 the worst cases. And it's painful and complicated because
3 of what I first said, which is the variety of levels of
4 protection that exist and financial capability and
5 stability of the entities who own and manage these
6 landfills.

7 But still, I think the bottom line is we have to
8 be concerned about future generations, regardless of which
9 alternative we pick.

10 CHAIRPERSON BROWN: Well, I think what my sense
11 is of consensus from where we are now and ready to move
12 forward is that it seems to me that this group is
13 currently favoring Option 2, to move forward and develop
14 regs based on the fact that we anticipate action on a
15 pooled fund option in the Legislature moving forward.

16 I think it's a very measured step forward. And
17 we need to be cognizant of the fact that could or couldn't
18 happen. We may need to go back and re-visit the issue of
19 the step down if that doesn't come forward. So whether
20 we're kicking our final decision down the road or not, it
21 seems it's inevitable that we need to somewhat see what
22 happens with the pooled fund. But we should go back to
23 that.

24 And once we have the decision on 2866 made by the
25 Legislature, then we can at least make some determination

1 about whether a contingency needs to be addressed or
2 whether we go back and re-visit the step down option and
3 1. Okay.

4 BOARD MEMBER PEACE: I was concerned with the
5 amount of the -- in 2866. The 50 million probably isn't
6 enough. But from what I understand, in 2020, 12 years
7 from now, all those caps comes off. Then we have a total
8 discretion of how to use that extra 60 cents. Then we can
9 put it all into a pooled fund -- so that cap does come
10 off, and we can have whatever we want in the pooled fund
11 or the Board at that time would be able to --

12 CHAIRPERSON BROWN: Kent is nodding his head.
13 That's the way it's currently drafted.

14 BOARD MEMBER PEACE: So we have the discretion if
15 we need to lower it or increase it, we can at that time.

16 CHAIRPERSON BROWN: That's the way it's currently
17 drafted.

18 Any other questions? Comments? Okay. That's
19 clear direction.

20 PROGRAM DIRECTOR RAUH: Thank you very much.

21 CHAIRPERSON BROWN: And anything else?

22 I think that exhausts our agenda.

23 The Board will move into closed session. Thank
24 you all very much.

25 (Thereupon the California Integrated Waste

1 Management Board recessed into closed session
2 at 12:00 p.m.)
3 (Thereupon the California Integrated Waste
4 Management Board adjourned closed session
5 at 1:05 p.m.)
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1 CERTIFICATE OF REPORTER

2 I, TIFFANY C. KRAFT, a Certified Shorthand
3 Reporter of the State of California, and Registered
4 Professional Reporter, do hereby certify:

5 That I am a disinterested person herein; that the
6 foregoing hearing was reported in shorthand by me,
7 Tiffany C. Kraft, a Certified Shorthand Reporter of the
8 State of California, and thereafter transcribed into
9 typewriting.

10 I further certify that I am not of counsel or
11 attorney for any of the parties to said hearing nor in any
12 way interested in the outcome of said hearing.

13 IN WITNESS WHEREOF, I have hereunto set my hand
14 this 24th day of July, 2008.

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